

2581-0142/dmf

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ALAN DeCARLO,

**ANSWER**

Plaintiff,

07 CV 11466 (CLB)

-against-

COUNTY OF DUTCHESS, DUTCHESS COUNTY  
SHERIFF'S DEPARTMENT, TYLER P. WYMAN, "JOHN"  
WILBER, "JOHN" DEHLEM, the first names being fictitious  
and present unknown, and JOHN DOE 1-3, the names being  
fictitious and presently unknown,

Defendants.  
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The defendants, by their attorneys, McCabe & Mack LLP, as and for their answer to  
the complaint of the plaintiff herein, respectfully shows to the court and alleges as follows.

**NATURE OF ACTION**

1. With regard to paragraph numbered "1" of the complaint, neither admit nor  
deny as states conclusions of law.

**JURISDICTION AND VENUE**

2. With regard to paragraphs numbered "2" and "3" of the complaint, neither  
admit nor deny as states conclusions of law.

**PARTIES**

3. Deny knowledge or information sufficient to form a belief as to the truth of the  
allegations contained in paragraphs numbered "4" and "10" of the complaint.

**FACTS UNDERLYING PLAINTIFF'S CLAIM FOR RELIEF**

4. With regard to paragraph numbered "13" of the complaint, admit only that  
plaintiff was stopped by defendant Wilber and ticketed for DWAI-Drugs.

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5. With regard to paragraph numbered "14" of the complaint, admit only that plaintiff was ordered from his car and deny the remaining allegations.

6. With regard to paragraph numbered "15" of the complaint, admit only that Wyman called for a K-9 unit.

7. Deny those allegations contained in paragraphs numbered "16", "17", "18", "20" and "21" of the complaint.

8. With regard to paragraph numbered "19" of the complaint, deny defendants "attacked plaintiff" and deny knowledge or information sufficient to form a belief as to the remaining allegations.

**AS TO THE FIRST CLAIM FOR RELIEF**

9. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "21" and incorporated by reference in paragraph "22" of the complaint as if the same were more fully set forth herein at length.

10. Deny those allegations contained in paragraphs numbered "23" and "24" of the complaint.

**AS TO THE SECOND CLAIM FOR RELIEF**

11. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "21" and incorporated by reference in paragraph "25" of the complaint as if the same were more fully set forth herein at length.

12. Deny those allegations contained in paragraphs numbered "26" and "27" of the complaint.

**AS TO THE THIRD CLAIM FOR RELIEF**

13. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "21" and incorporated by reference

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in paragraph “28” of the complaint as if the same were more fully set forth herein at length.

14. Deny those allegations contained in paragraphs numbered “29” and “30” of the complaint.

**AS TO THE FOURTH CLAIM FOR RELIEF**

15. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “21” and incorporated by reference in paragraph “31” of the complaint as if the same were more fully set forth herein at length.

16. Deny those allegations contained in paragraphs numbered “32” and “33” of the complaint.

**AS TO THE FIFTH CLAIM FOR RELIEF**

17. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered “1” through “21” and incorporated by reference in paragraph “34” of the complaint as if the same were more fully set forth herein at length.

18. Deny those allegations contained in paragraphs numbered “35”, “36” and “37” of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

19. The individual defendants acted in good faith and are entitled to qualified immunity.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

20. All force used was reasonable and necessary.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

21. The complaint fails to state a claim for relief against Dutchess County or its Sheriff’s Department.

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**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

22. The complaint fails to state a claim under state law.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

23. The Court lacks personal jurisdiction over the individual defendants due to a failure of service of process.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

24. Punitive damages are not recoverable against a municipality.

WHEREFORE, the defendants demand judgment dismissing the complaint of the plaintiff herein, plus the costs and disbursements of this action and for such other and further relief as to the Court may seem just and proper.

DATED: Poughkeepsie, New York  
March 28, 2008

Yours, etc.

McCABE & MACK LLP

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